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U.S. DISTRICT COURT

UNITED STATES COURT OF CLAIMS  
RECEIVED JUN 29 1972

DOCKET NUMBER: 21772

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No. 71 - 1182

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Plaintiff Native.

Petitioner

v.

G. RAYMOND ARNETT,

Respondent

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Supplemental and Reply Brief

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# SUPPLEMENTAL AND REPLY BRIEF

## BASIS FOR BRIEF

This brief is based on a new decision and the need to correct misstatements in respondent's brief.

### I.

#### THE NATIONAL ATLAS SHOWS THE LOWER TWENTY MILES OF THE KLAMATH RIVER TO BE WITHIN AN INDIAN RESERVATION

The National Atlas is the official atlas of the United States. Published by the Department of the Interior in 1970, the National Atlas shows the entire Hoopa Extension--from the Pacific Ocean to the Hoopa Square--as within the nation's Indian reservations. (Sheet 272.) The lower twenty miles of the Extension, which is the subject of this lawsuit, is part of that reservation area.

### II.

#### A COURT OF CLAIMS COMMISSIONER HAS RULED THAT THE LOWER TWENTY MILES OF THE HOOPA EXTENSION IS PART OF A RESERVATION

Jessie Short v. United States is a Court of Claims proceedings (No. 102-63) to determine whether Indians of the Hoopa Extension are entitled to share in proceeds from timber sales on the Hoopa Square. The main issue in that case is whether the Extension and the Square are one reservation.

On May 22, 1972, a Court of Claim's commissioner ruled that the Extension and

the Square were one reservation.<sup>1</sup> The commissioner then ruled that the lower twenty miles were part of that reservation. (Slip Opinion at 111.) People born on the lower twenty after 1892 were held to have been born on the reservation. (Slip Opinion at 115 (¶ 209), 116 (¶ 213, 214).)

The commissioner's ruling is in accord with petitioner's view of the act of June 17, 1892, and totally inconsistent with the State's view.

### III.

#### RESPONDENT HAS MISSTATED THE BASIS FOR THE SEYMOUR DECISION

According to respondent's brief (pp. 5 - 6), Seymour v. Superintendent, 368 U.S. 351 (1962) held that reservation land is restored to the public domain if it is opened to non-Indian homesteading. What this court actually ruled in Seymour is that without an express change in status from reservation to public domain, the availability of reservation land for non-Indian homesteading does not place that land in the public domain. Thus the North Half of Colville became public domain under the 1892 Act while the South Half, also opened to non-Indian homesteading but not expressly restored to the public domain, remained a reservation under the 1906 Act.

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1. The Court need not decide in this case if the Extension is part of the Hoopa Reservation. Whether the Hoopa Extension is a reservation or part of a reservation, it is Indian Country within the meaning of 18 U.S.C. §§1151 and 1162.

The 1892 Hoopa Extension law contains no language changing the status of the lower twenty miles of that reservation (formerly the Klamath River Reservation) to public domain. Like the 1906 Colville Act, the 1892 Hoopa Extension law merely authorized sale of unallotted lands under the public land laws.

Respondent also misrepresents Seymour's holding on proceeds from the sale of "surplus" lands. Seymour found a fundamental difference between the 1906 Colville Act which reserved the proceeds only for the Indians and the 1892 Colville Act which took the proceeds for public use but allowed, pending Congressional appropriation, interim Interior Department use for Indians. The 1906 disposition of the proceeds indicated that the Government was to act as trustee for reservation lands rather than as broker for its own property. The 1892 Hoopa Extension Act also made Indians the sole beneficiaries.

#### IV.

##### RESPONDENT'S BRIEF CONTAINS NUMEROUS ERRONEOUS STATEMENTS

Respondent's brief states:

"[T]he 1892 enactment specifically refers to 'lands in what was [the] Klamath River Reservation,' thus directly implying that its reservation status is to cease." (p. 4)

That brief, acknowledges, however, the inaccuracy of the contention. It states (p. 2): "The (Klamath River) res-

ervation was terminated under legislation enacted in 1864." (See also Petition for Certiorari at 3-4.)

The Court of Claims commissioner fully explained in Jessie Short v. United States, supra, why the phrase "what was [the] Klamath River Reservation" was used to describe the lower twenty miles of the Extension.

"Almost immediately following the executive order [of 1891], Congress on June 17, 1892 enacted a bill for the allotment of lands on the Klamath River Reservation, to be followed by the public sale of the remaining land, the proceeds of sale to be a fund for the benefit of the Indians of the reservation (finding 77, supra). Bills of this nature had been considered for many years on the premise that the Klamath River Reservation was abandoned (see findings 50-77, supra); the proponents were not about to make their cause less attractive by amending the name of the reservation to be sold to call it the former Klamath River Reservation, now part of the Hoopa Valley Reservation."

Respondent also errs when it says:

"The practical effect of the 1892 legislation was....[that] the area lost its resemblance to the neighboring extension located on the upper twenty miles of the Klamath River.... [T]he traditional functions

of a reservation continued in one area but not the other...."  
(p. 5)

The record contains no evidence to support that statement and the law is to the contrary. The 1892 Act provided for the Secretary to reserve Indian villages on the lower twenty from homesteading just as the 1906 Colville Act directed the Secretary to reserve lands necessary for agency, school and religious purposes. In Jessie Short the commissioner found eight Indian villages on the lower twenty. (Slip Opinion at 111.)

Finally, the record is completely barren of any substantiation for respondent's contention that traditional Indian fishing such as petitioner engaged in (petition for certiorari at 9) would jeopardize the "vital and irreplaceable fishing resource in the Klamath River." All the fisheries in California thrived under Indian control; it is non-Indians who are responsible for the dams, pollution, road construction, and over-fishing that imperil California's fish resource.

#### CONCLUSION

The Court should grant a writ of certiorari in this case.

Dated: June 27, 1972

Respectfully submitted

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